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Attorney for Plaintiff
Gerardo Hernandez

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GERARDO HERNANDEZ,) No.
)
Plaintiff,) COMPLAINT ASSERTING DENIAL OF
) RIGHT OF ACCESS UNDER THE
vs.) AMERICANS WITH DISABILITIES ACT
) FOR INJUNCTIVE RELIEF,
PARS AUTO TECH, INC. dba BELMONT) DECLARATORY RELIEF, DAMAGES,
SHELL; HASSAN EGHdami;) ATTORNEYS' FEES AND COSTS (ADA)
)
Defendants.)
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I. SUMMARY

1. This is a civil rights action by plaintiff GERARDO HERNANDEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Belmont Shell
2000 Ralston Avenue
Belmont, CA 94002
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against PARS AUTO TECH, INC. dba BELMONT SHELL and HASSAN EGHdami

(hereinafter collectively referred to as “Defendants”), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Defendants own, operate, and/or lease the Facility, and consist of a person (or persons), firm, and/or corporation.

8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Facility is a gas station that is open to the public, intended for non-residential use, and its operation affects commerce. The Facility is therefore a public accommodation as defined by applicable state and federal laws.

10. Plaintiff lives less than 15 miles from the Facility and visited the Facility on or about April 27, 2024 to buy gas. During his visit to the Facility, Plaintiff personally encountered barriers (both physical and intangible) that interfered with, if not outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and accommodations offered

1 at the Facility. These barriers include, but are not necessarily limited to, the following:

- 2 a) Plaintiff wanted to park in an accessible parking stall so that he could go
3 into the store to pay the cashier, as he was paying cash. However, he had
4 difficulty locating the designated accessible parking stall because it
5 lacked proper signage or pavement markings. Once he located it, he
6 realized he could not park there because the space was improperly
7 configured, with a narrow access aisle that was excessively sloped due
8 to the curb ramp extending into it, and there was no wheel stop at the
9 end of the stall to prevent other vehicles from obstructing it. In fact,
10 there were parked vehicles all around the parking stall and obstructing
11 the access aisle.
- 12 b) Plaintiff could not park at the fuel pump and go into the store either,
13 because there was no safe accessible route from the fuel pumps to the
14 entrance. Additionally, the route was excessively sloped and contained
15 excessive height changes that would have been difficult for him to wheel
16 over. Accordingly, Plaintiff had to send his son into the store to pay for
17 Plaintiff's gas.

18 11. There may exist other barriers at the Facility which relate to Plaintiff's
19 disabilities, and he will seek to amend this Complaint once such additional barriers are
20 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
21 his disabilities removed to afford him full and equal access.

22 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
23 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
24 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
25 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
26 once the barriers are removed.

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1 17. Title III of the ADA holds as a “general rule” that no individual shall be
2 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
3 goods, services, facilities, privileges, and accommodations offered by any person who owns,
4 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

5 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
6 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
7 Facility during each visit and each incident of deterrence.

8 Failure to Remove Architectural Barriers in an Existing Facility

9 19. The ADA specifically prohibits failing to remove architectural barriers, which
10 are structural in nature, in existing facilities where such removal is readily achievable. 42
11 U.S.C. § 12182(b)(2)(A)(iv).

12 20. When an entity can demonstrate that removal of a barrier is not readily
13 achievable, a failure to make goods, services, facilities, or accommodations available through
14 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
15 § 12182(b)(2)(A)(v).

16 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
17 barriers at the Facility without much difficulty or expense, that the cost of removing the
18 architectural barriers does not exceed the benefits under the particular circumstances, and that
19 Defendants violated the ADA by failing to remove those barriers, when it was readily
20 achievable to do so.

21 22. In the alternative, if it was not “readily achievable” for Defendants to remove
22 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
23 services available through alternative methods, which are readily achievable.

24 Failure to Design and Construct an Accessible Facility

25 23. Plaintiff alleges on information and belief that the Facility was designed and
26 constructed (or both) after January 26, 1993 – independently triggering access requirements
27 under Title III of the ADA.

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24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

34. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

VII. SECOND CLAIM

Unruh Act

35. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

36. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

37. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

38. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

39. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

40. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

1 4. Attorneys' fees, litigation expenses, and costs of suit.²

2 5. Interest at the legal rate from the date of the filing of this action.

3 6. For such other and further relief as the Court deems proper.

4 Dated: August 22, 2024

MOORE LAW FIRM, P.C.

6 /s/ Tanya E. Moore

7 Tanya E. Moore

8 Attorney for Plaintiff

Gerardo Hernandez

27 _____
28 ² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, GERARDO HERNANDEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 08/22/2024

/s/ Gerardo Hernandez
Gerardo Hernandez

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore
Tanya E. Moore
Attorney for Plaintiff,
GERARDO HERNANDEZ